

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

AVX Corporation,)
)
Plaintiff,) Civil Action No.: 6:20-cv-01244-TMC
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.) _____
)

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

Plaintiff, AVX Corporation (“AVX”), and defendant, United States of America, by their respective counsel, jointly move for entry of a consent judgment on Count II of the Complaint and to a dismissal of Count I of the Complaint with prejudice. A proposed Consent Judgment is included with this motion for the Court’s convenience.

In support of this motion the parties state:

1. AVX filed this suit to recover \$400,000 in penalties or, in the alternative, \$300,000 in penalties, it claims the IRS erroneously assessed under section 6038B of the Internal Revenue Code (26 U.S.C., hereinafter “I.R.C.”) and collected.
2. The IRS initially assessed \$600,000 in aggregate penalties against AVX in connection with the transactions described in the complaint.
3. On or about February 17, 2020, the IRS abated a penalty of \$100,000 and refunded that amount to AVX.
4. AVX is liable under IRC § 6038B for \$200,000 in aggregate penalties, comprised of \$100,000 for each of the following transactions:

(a) a transfer, by AVX Development, Inc., of 0.9 percent of Elco Europe GmbH (Elco) stock to AVX Koninkrijk de Netherlanden CV, on or about March 12, 2012; and,

(b) a transfer, by AVX, of 89.1 percent of Elco stock to AVX Koninkrijk de Netherlanden CV, on or about March 12, 2012.

5. The IRS erroneously assessed penalties in the amount of \$400,000 against AVX pursuant to I.R.C. § 6038B.

6. AVX is entitled to an overpayment of \$300,000. That amount represents the difference between the \$600,000 in penalties the IRS assessed against AVX and collected, minus (a) the \$200,000 in penalties properly imposed (as reflected in paragraph 4, above); and (b) the \$100,000 penalty abatement that the IRS refunded to Plaintiff on or about February 17, 2020.

7. The parties request that the court enter judgment in favor of AVX for that amount.

8. Neither AVX nor any of its subsidiaries or related entities involved in the transactions described in the Complaint are liable for any additional I.R.C. § 6038B penalties based on the transactions described in the Complaint.

9. Each party to bear their own costs and fees

Respectfully submitted,

June 12, 2020

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